



Patent
Attorney's Docket No. 003300-914

1646
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)	
Kjell Olmarker)	Group Art Unit: 1646
Application No.: 10/092,919)	Examiner: PREMA MARIA MERTZ
Filed: March 8, 2002)	Confirmation No.: 1488
For: NOVEL USE OF CYTOKINE)	
INHIBITORS)	
)	
)	
)	

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In complete and timely response to the Office Action [restriction requirement] of June 8, 2004, Applicant submits the following response.

In the Office Action [restriction requirement], the Examiner sets forth a restriction requirement among fifty groups of the claims. Applicant herewith elects Group XXXXX (Group 50), Claims 1-10, 23, 24-25, drawn to a method for prevention or reduction of scar tissue and/or adhesion formation by administering lactoferrin, classified in class 514, subclass 23, with traverse.

First, Applicants note that in the Office Action, the Examiner states that claim 23 is directed to lactoferrin only. Applicants submit that this is not the case, as claim 23 (and thus Group XXXXX) is directed to methods of prevention and reduction of scar tissue and/or scar formation by administering lactoferrin or a peptide derived from lactoferrin.

Turning to the restriction requirement, regardless of whether the two inventions are independent or distinct, Applicants respectfully assert that the Examiner need not have restricted the application. MPEP § 803 requires that “[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” Therefore, it is not mandatory to make a restriction requirement in all situations where it would be deemed proper.

Applicant respectfully submits that the inventions of Group XXXXX are closely related and that a proper search of any of the claims should, by necessity, require a proper search of the others. Thus, Applicants submit that all of the claims can be searched simultaneously, and that a duplicative search, with possibly inconsistent results, may occur if the restriction requirement is maintained. Applicant submits that any nominal burden placed upon the Examiner to search accordingly to determine the art relevant to Applicant's overall invention is significantly outweighed by the public's interest in not having to obtain and study many separate patents in order to have available all of the issued patent claims covering Applicant's invention. The alternative is to proceed with the filing of multiple applications, each consisting of generally the same disclosure, and each being subjected to essentially the same search, perhaps by different Examiners on different occasions. This process would place an unnecessary burden on both the Patent and Trademark Office and on the Applicant.

As further required, Applicants elect as species, the condition "post traumatic tissue injury", as recited in claim 5, with traverse.

Applicants submit that all of the species should be examined together. Wound healing, with or without subsequent scar formation, is a very basic physiological response following tissue injury. Because this response is so fundamental, it is similar between various species, and the basic biological mechanisms are also similar regardless of the specific injury that initiates this response. Claims 4-6 all are directed to tissue injury due to trauma. The trauma is characterized by tissue injury due to external influence by, for example, pressure, cuts, contusions or excessive temperature. The basic physiological response is extremely similar, if not identical, in all of these instances, and is based on early inflammatory changes in the affected tissue.

The physiological response is also the same with regard to claim 9, directed to tissue injury induced by external or internal exposure to a toxic substance. Claim 7 is directed to reduced tissue nutrition, caused by vascular disease or an infarction of an organ. As compared with external trauma, there is a very similar response at the tissue level.

Thus, Applicants submit that the present invention will be effective on all of the species (disease conditions) listed in the Office Action, as recited in claims 4-9. Rejoinder and examination of all of the listed species is respectfully requested.

Reconsideration and withdrawal of the restriction requirement are requested. Applicant has no intention of abandoning any non-elected subject matter and expressly reserve the right to file one or more continuation and/or divisional applications directed to the non-elected subject matter.

Applicant earnestly solicits favorable consideration of the above response and early passage to issue the present application. The Examiner is invited to contact the undersigned at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: September 8, 2004

By: _____


Deborah H. Yellin
Registration No. 45,904

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620